IN THE HIGH COURT OF BOMBAY AT GOA
***

FIRST APPEAL NO. 214 OF 2002

Shri Sebastiao Gomes,
(since deceased) through
his L.Rs.:-

a) Smt. Regina Gomes,
major in age, widow of
Sebastiao Gomes; and

b) Miss Francisca Gomes,
major in age, daughter of
Sebastiao Gomes, service,
both r/o House No.643,
Mandopa, Navelim, Aquem-Baixo,
Firgulem, Salcete, Goa. ... Appellants.

Versus

1. Shri Govind Tari,
s/o Dattaram Tari,
major in age, driver of vehicle
No.GA-01-X/0012, r/o House
No.108, Bandirwade, Kharewado,
Ponda, Goa,

2. Kadamba Transport Corporation,
Panaji, Goa, owner of vehicle
No. GA-01-X/0012; and

3. Shri John Gomes, major
in age, s/o Sebastiao
Gomes, bachelor, r/o House
No.643, Mandopa, Navelim,
Aquem-Baixo, Firgulem,
Salcete, Goa. ... Respondents.

Shri S. S. Kakodkar, advocate for the appellants.

Shri A. R. Kantak, advocate for respondent no.2.

CORAM : F. I. REBELLO, J.

DATE : 17th July, 2003.

ORAL JUDGMENT

Apart from the sum of Rs.25,000/- awarded under Section 140 of the Motor Vehicles Act, 1988, the Claims Tribunal also awarded the sum of Rs.23,750/- towards loss of

estate.

2. The case of the appellants is that apart from the original injury to the toe, the deceased has also four fingers amputated on account of the accident. This has not been taken into consideration by the learned Claims Tribunal.

3. A perusal of the judgment of the learned Claims Tribunal would show that the same has been taken into consideration. The learned Claims Tribunal relied upon the evidence of the doctor, to arrive at the conclusion that the loss of the fingers on account of gangrene could not be associated with the accident. Learned counsel however, tries to point out from the evidence of the doctor wherein the doctor has stated that it is possible. A mere possibility is not positive evidence to hold that the gangrene is associated with the loss of the fingers on account of the accident. It was for the appellants to prove the same by positive evidence and that has not been done.

In the light of that no interference is called for. The First Appeal is rejected.

F. I. REBELLO, J.

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